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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 547

C-O-TWO FIRE EQUIPMENT COMPANY,
Petitioner,

v.

SPECIALTIES DEVELOPMENT CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

R. MORTON ADAMS,
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Supreme Court of the United States

OCTOBER TERM, 1953

No. .....

C-O-Two Fire Equipment Company,
Petitioner,

v.

Specialties Development Corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Cicuit entered in the above-entitled case on November 5, 1953.

Opinions Below

The opinion of the District Court (R. 26-34) is reported in 109 F. Supp. 732 (D. C. N. J. 1953). The opinion of the Court of Appeals (R. 80-84) is reported in 207 F. 2d 753 (C. A. 3 1953).

Jurisdiction

The judgment of the Court of Appeals was entered on November 5, 1953 (R. 84). A petition for rehearing was filed on November 20, 1953 (R. 85-87) and was denied on November 30, 1953 (R. 88). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Question Presented

Where a patent license agreement provides that the licensor will enforce the patents against infringements, can the licensor enforce the agreement and recover royalties where he has failed to perform his obligation to sue infringers?

Can the licensor collect royalties without suing infringers where the agreement to pay royalties is based on licensor undertaking to fix prices and to sue infringers who undersell?

Statement

In 1932 Walter Kidde & Company, assignor to its subsidiary, Specialties Development Corp., the respondent herein, entered into identical patent license agreements with American-LaFrance Foamite Corp. and C-O-Two Fire Equipment Company, the petitioner herein, granting licenses under certain United States and Canadian patents covering certain devices embodied in carbon dioxide fire extinguishers. Among these were United States Minor Patent No. 1,760,274 and Canadian Minor Patent No. 310,417.

The license agreement was more than a simple license with a provision for royalty (R. 37-54). The agreement was, in its entirety, an agreement designed to protect against unlicensed price cutting competition (R. 28). It was for this protection, to be secured by the enforcement of patents, and not for the mere right to use the inventions, that the agreement to pay royalties was made.

Paragraph 1 (R. 37) of the license agreement provided that it was a grant of *exclusive* rights under certain United States patents and corresponding Canadian patents.

Paragraphs 7 and 8 (R. 40-42) provided for a system whereby licensor fixed the price and terms of sale to pre-

vent price cutting and to insure competition on equal price terms. Paragraph 7 provided that the license was granted:

> "• • • solely upon the condition that licensee • • • shall not during the remainder of the respective terms of said patents directly or indirectly sell or otherwise dispose of any CO_2 fire extinguishing apparatus • • • embodying features covered by said patents or either of them at prices less than, or upon terms contrary to those followed by licensor and set forth in the Schedule of Minimum Price and Terms • • •."

In paragraph 8 the licensor guaranteed that the terms and conditions of the Minimum Prices and Terms provisions would be binding on it and the other licensees.

Paragraph 12 (R. 45-46) provided that if minimum price schedules were not maintained, the licensee would be relieved of its obligation to pay royalties:

> "• • • Licensee, while still remaining entitled to the license rights under such patent or patents, shall thereupon be relieved of all further obligation to pay royalty on apparatus employing the invention of any patent or patents as to which such price restriction has been terminated. • • •"

Paragraph 12 also recognized the relation of licensee's royalty obligation to licensor's obligation to maintain exclusiveness and prevent unlicensed competition. It provided that, in the event the licensor terminates the minimum price restrictions set forth in the agreement and the licensee is thus relieved of the obligation to pay royalties:

> "• • • The Licensor shall then be relieved of its obligation expressed in Article 17 hereof to commence or maintain at least one infringement suit under such patent or patents as to which such Schedule of Minimum Prices and Terms has been cancelled and terminated by Licensor."

The protective value of the exclusive grant of paragraph 1 and the protection afforded by the price restrictions of paragraph 7 depended upon the enforcement and enforceability of the patents, namely, they depended on suing unlicensed competitors for infringement of the patents. Paragraph 17 (R. 47-48) of the agreement accordingly provided:

> "Licensor shall enforce the patents hereby licensed against all infringements but shall not be called upon to conduct more than one suit at a time on either patent."

While this license agreement was in force, Randolph Laboratories, Inc., an unlicensed competitor, manufactured and sold carbon dioxide fire extinguishers which utilized the subject matter of the Minor patents. These infringing devices were made and sold in the United States and were also shipped by Randolph Laboratories, Inc., to dealers in the Dominion of Canada where they were sold and used in infringement of the Canadian Minor patent at prices less than those then being maintained by Walter Kidde & Company. The petitioner, C-O-Two Fire Equipment Company, notified Walter Kidde & Company, the licensor, of the infringements and of the price cutting competition produced thereby. It advised the licensor that it would, under the agreement, suspend the payment of royalties until the licensor enforced the licensed patents against the infringing, price cutting competition (R. 28-30). Licensor's successor (Specialties Development Corp.), without suing the infringer, sued petitioner for royalties due on sales in the United States and Canada under the license agreement.

While such suit was pending against petitioner, the infringer, Randolph Laboratories, Inc., commenced a declaratory judgment action against Specialties Development Corporation seeking a declaration of invalidity with respect to

the United States Minor Patent No. 1,760,274, one of the licensed patents. In that action, Specialties Development Corporation counterclaimed, charging Randolph with infringement of said patent. After such assertion of the patent against the infringer in the United States, the petitioner, C-O-Two Fire Equipment Company (without waiting for adjudication of the patent) paid the licensor the royalties due for sales in the United States and the parties stipulated that the complaint in this action be dismissed with respect to royalties due on such sales. The action continued with respect to the obligation to pay royalties on products sold in Canada.

The United States patent was subsequently held invalid.* The Canadian patent has never been sued on.

The Decision of the District Court

The District Court held licensor could recover Canadian royalties nonetheless. Although the District Court held that licensor's breach was material (R. 32)—

> "* * * The failure of the plaintiff to fulfill its obligation was a material breach of the license agreement * * *"—

the Court held that the case was controlled by the decision in *Rosenthal Paper Co.* v. *National Folding Box & Paper Co.*, 226 N. Y. 313 (1919) and erroneously construed that case, in conflict with the opinions of the Court of Appeals in the First and Eighth Circuits, as holding that licensee's only remedy was to terminate the license and sue for damages—or to offset damages against royalties when sued for royalties.

Such a rule is a harsh and impractical one. Damages to this licensee due to sales by an infringer would be practi-

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* 178 F. 2d 477 (C. A. 3, 1949).

cally impossible to prove with licensor and another licensee also in the field—and termination of the agreement would mean giving up the right to use four other patents, two United States and two Canadian (R. 37). It would mean giving up the investment based thereon. And thereafter licensor could sue the infringer but licensee could not recapture his license. Or, if licensee did not give up his license, the rule would effectively permit breach by licensor of a material obligation without penalty since damages could not be proved.

The Court recognized its holding was in conflict with the general rule (R. 33):

> "• • • It has been held in other jurisdictions that the failure of the licensor to enforce the patent against infringement precludes the recovery of royalties. The rule has been applied only where, as here, the license agreement contains a provision which requires such enforcement. Massie v. Asbestos Brake Co., 126 A. 669; Wilfley v. New Standard Concentrator Co., 164 Fed. 421; See also Penley Bros. Co. v. Hall, 84 F. 2d 371. These cases appear to be in conflict with the case of Rosenthal Paper Co. v. National Folding Box & Paper Co., supra. • • •"

The Decision of the Court of Appeals

The Court of Appeals also found licensor's failure to sue was a material breach (R. 82):

> " • • The trial judge concluded that the plaintiff's 'failure to take appropriate action to enjoin the infringement was a material breach of the license agreement.' We agree. Protection against infringers was an essential of the contract for which defendant bargained. • • •"

The Court of Appeals decided for licensor and upheld its right to recover royalties on the ground that it is a:

> "• • • general proposition that one against whom a material breach is committed must make up his mind what he is going to do about it, and that if he goes ahead with performance he is not excused from liability under the terms of the contract."

The Court of Appeals did not however comment on the conflicting decisions of the 1st, 8th and 9th Circuits holding that damages cannot be recovered for the breach of a contract by a party who himself, has not rendered substantial performance.

Specification of Errors to be Urged

The Circuit Court of Appeals erred—

1. In permitting a licensor to recover royalties in the absence of proof of the performance of a material covenant of the license agreement to prosecute infringers, upon which the agreement to pay royalties was dependent.

2. In ignoring the fact that the agreement was, in its entirety, an agreement designed to protect against unlicensed price cutting competition and that it was for this protection, to be secured by the enforcement of patents, and not with a mere right to use the inventions, that the agreement to pay royalties was made.

3. In holding, where the licensee was deprived of the benefit of the most important aspect of the agreement, namely, freedom from unlicensed price cutting competition, continued manufacture of the licensed product was a waiver of the breach permitting the licensor to recover without proving full or substantial performance.

Reasons for Granting the Writ

1. The decision of the Court of Appeals is in direct conflict with the Court of Appeals in the 1st Circuit, 8th Circuit, 9th Circuit and the Courts of the State of California and the State of New Jersey.

An examination of the opinion of the Court of Appeals in this case reveals that the Court decided the question at issue on the basis of its view of the application of general principles of law. The Court of Appeals' opinion cannot be otherwise construed than the law of that Circuit on the issue of whether a licensee may defend a claim for royalties by asserting the licensor's breach of an express covenant to sue infringers.

The opinion represents a direct conflict, on this specific issue, with the law as applied by the Court of Appeals in the 9th Circuit, *Wilfley* v. *New Standard Concentrator Co.*, 164 Fed. 421 (C. C. A. 9, 1908), where it was held:

> "* * * There can be no question that the covenant to guard the claims of the Wilfley patent and the rights granted the licensee thereunder, and to prosecute infringers, was a concurrent condition, to be complied with at all times during the life of the license. A license implies that the licensee shall not be evicted from its enjoyment and such an eviction is a defense to a suit for royalties accruing after it occurred * * *."

Direct conflict also exists with respect to the law as applied by the Court of Appeals for the 8th Circuit, *Western Battery & Supply Co.* v. *Hazelett Storage Battery Co.*, 61 F. 2d 220, 235 (C. C. A. 8, 1932), where that Court of Appeals barred a licensor from recovering royalties because of a breach of a covenant to sue infringers:

> "* * * in the event of competition by an infringer, it was to have a choice between requiring immediate

repurchase, and continuing manufacture under the patents, but without royalty being required until the competition should cease."

Direct conflict also exists between the Court's ruling in this case and that of the Court of Appeals for the 1st Circuit, *Penley Bros. Co.* v. *Hall*, 84 F. 2d 371 (C. C. A. 1, 1936), where the Court sustained the defense of breach of a covenant to sue infringers when asserted by the licensee as a bar to the recovery of royalties:

> "We think it clear that the clause which the plaintiff broke cannot be said to be independent, legally speaking, of the provision for payment of royalties. Royalties are distinctly the fruit of the patent monopoly; they are payments for it. Where a patent license agreement puts the *entire* burden of defending the patent upon the *licensor*, it is well settled that failure to do so on his part prevents him from recovering royalties. Wilfley v. New Standard Concentrator Co. (C. C. A.), 164 F. 421; Rosenthal Paper Co. v. National Folding Box Co., 226 N. Y. 313, 123 N. E. 766; Massie v. Asbestos Brake Co., 96 N. J. Eq. 612, 126 A. 669. * * *"

Conflict also exists with the ruling of the Courts of the State of New Jersey. In *Massie* v. *Asbestos Brake Co.*, 96 N. J. Eq. 612, 126 Atl. 669 (1924) the Court held the covenants to pay royalties and to sue infringers to be mutual and denied the licensor recovery of royalties on products manufactured after breach of the licensors' covenant to prosecute infringers.

> "* * * that a covenant to guard the claims of the patentee and protect the rights granted to the licensee against infringers is a concurrent condition, upon which the obligation of the licensee to pay royalties depends, and that this covenant of the patentee is to

> be complied with at all times during the life of the license, that the right granted under such a license is in the nature of a monopoly, distributed among licensees, and, so long as it is enjoyed by the licensees, they are bound to pay the consideration therefor, but that when, by reason of something beyond their control, they are deprived of that exclusive right, there is a failure of consideration; * * *."

Conflict also exists with the ruling of the Courts of California, *Lane-Wells Co.* v. *Schlumberger Well Surveying Co.*, 65 Cal. App. 2d 180, 150 P. 2d 251 (Calif. 1944), where the Court applied a similar rule.

2. The decision of the Court of Appeals is in direct conflict with the opinion of the Courts of Appeal in the 1st and 8th Circuits with respect to the holding in Rosenthal Paper Co. v. National Folding Box & Paper Co., 226 N. Y. 313 (1919).

The District Court and the Court of Appeals below both interpreted the law of New York, as expressed in *Rosenthal Paper Co.* v. *National Folding Box & Paper Co.*, 226 N. Y. 313 (1919), to allow recovery of royalties to a licensor who had breached a covenant to sue infringers.

The 1st Circuit Court of Appeals in *Penley Bros. Co.* v. *Hall*, 84 F. (2d) 371, 374 (C. A. 1, 1936), specifically cited the *Rosenthal* case as precluding the recovery of royalties on products manufactured after breach of a covenant to sue infringers. That Court of Appeals cites the *Rosenthal* case as standing for the same proposition as *Wilfley* v. *New Standard Concentrator Co.*, 164 Fed. 421 (C. A. 9, 1908) and *Massie* v. *Asbestos Brake Co.*, 96 N. J. Eq. 612 (1924).

The 8th Circuit Court of Appeals in *Western Battery & Supply So.* v. *Hazelet Storage Battery Co.*, 61 F. (2d)

220, 233 (C. A. 8, 1932), in barring a licensor from recovering royalties because of breach of a covenant to sue infringers, cited the *Rosenthal* and *Wilfley cases* in support of such holding.

3. The opinion of the Court of Appeals establishes a new rule of law with respect to patent license agreements which upsets widespread vested rights based on the law as heretofore established.

The law has been settled without question for many years by decisions in the several State and Federal courts that, where licensor does not live up to a covenant to sue, the licensee need not pay royalties until he does. Presumably the many license agreements which pervade our industrial fabric were entered into on the assumption this was the law and capital was invested and ventures embarked upon in reliance thereon.

If a licensee invests in plant expansion, tooling, advertising, creation of good will, etc. with respect to a licensed product and establishes a price for the same, which includes as part of the cost, the royalty, he is at a distinct competitive disadvantage if he is faced with unlicensed competition which is not required to pay such royalty. This economic fact in regard to patented products has not gone unnoticed by the Courts. In *Schumacher Wall Board Corp.* v. *Buttonlath Mfg. Co.*, 10 F. (2d) 814 (Calif. 1932), the Court held:

> "Assuming, as we must, that the local cost of manufacture would be about the same, the licensee, who (like the defendant) could not manufacture or sell the product except upon the payment of * * * royalty annually, would at once be placed at a disadvantage by other licensees competing with him in the same territory, who could manufacture and sell the same product without the payment of any royalty. This fact would flow from the very nature of things and by the economic laws of production and distribution."

If the licensor refuses to protect the licensee by suing infringers, the licensee cannot abandon manufacture of the product after such initial investment. His only recourse is to meet the price cutting competition of infringers. And this he can only do by suspending the payment of royalties until the licensor undertakes to restore the monopoly of the patent in that field of manufacture.

The Court of Appeals has failed to recognize the existence of these factors which were explicitly spelled out in the agreement in issue and the Court has established a new rule of law in direct conflict with the economic reality inherent in the licensing of patents as well as with the rule of law heretofore applied by the Courts.

The decision of the Court of Appeals of the Third Circuit in deciding contrary to other Courts, has upset widespread vested property rights.

Conclusion

WHEREFORE YOUR PETITIONER respectfully prays that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Third Circuit to the end that this cause may be reviewed and determined by this court; that the judgment of the Court of Appeals for the Third Circuit and that of the District Court be reversed; and that petitioner be granted such other and further relief as may be proper.

C-O-TWO FIRE EQUIPMENT COMPANY
By

R. MORTON ADAMS,
Counsel for Petitioner.

FEB 23 1954
HAROLD B. WILLEY, Clerk

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Supreme Court of the United States

OCTOBER TERM—1953

No. 547

C-O-TWO FIRE EQUIPMENT COMPANY,
Petitioner,

v.

SPECIALTIES DEVELOPMENT CORPORATION,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Opinions Below

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Corrections to Petitioner's Statement of the Case

Petitioner's statement of the case is both misleading and inaccurate.

It is misleading in the emphasis on price fixing, which is apparently thought to be of special interest to this Court. There is no question involving price fixing in this case.

The fact is that price fixing was abrogated in the United States (but not in Canada) by supplementary agreement dated August 28, 1942. This supplementary agreement was in the record before the Court of Appeals as part of Exhibit P-1. It was not printed by either party in their appendices below, and is therefore printed as an appendix hereto at page 7.

The judgment of $13,454.51 (R. 35) was for royalties accrued in the years 1946-49 (R. 26), many years after price fixing was abrogated in the United States.

It is at least misleading in the wording on page 4 that:

> "These infringing devices were made and sold in the United States * * * at prices less than those *then being maintained* by Walter Kidde & Company." (Emphasis added.)

the asterisks representing the remainder of a complex, ambiguous sentence which could be read in its entirety to mean that prices were "then being maintained" in the United States.

It is inaccurate in several respects.

It is inaccurate in stating on page 2 that the license was exclusive, citing Paragraph 1 of the agreement (R. 37).

The fact is that the license agreement was never exclusive. Paragraph 1 (R. 37) provides that it is exclusive

> "except as to Licensor and except as otherwise provided in Article 9 hereof".

Article 9 sets forth the other licenses and further provides (R. 43):

> "that upon September 1, 1935 and thereafter this license shall become and remain non-exclusive."

It is inaccurate in stating on page 4 that Randolph's declaratory judgment suit against Respondent was begun while this present suit was pending.

The fact is that Randolph's suit was filed on April 30, 1945 and Respondent's counterclaim for infringement of the U. S. Minor patent was filed November 28, 1945 (R. 70), before any royalties were withheld by Petitioner. The complaint in this action was filed June 6, 1947 (R. 1), more than 2 years later.

It is further misleading on page 5 in stating that it was "after such assertion" of the U. S. Minor patent by Respondent's counterclaim against Randolph, that Petitioner paid its U. S. royalties, as though such "assertion" led to the payment.

As just pointed out the "assertion" by counterclaim was made November 28, 1945, *before any royalties were withheld,* and two and one-half years before the U. S. royalties were paid.

The Question Presented

The questions stated on page 2 of the petition do not fairly present questions this Court will be called upon to decide if certiorari is granted. The question presented was (if Respondent breached the contract) correctly stated by the Court below in its opinion at R. 82 as follows:

> "The single problem in our case then becomes: What is the New York law governing the rights of parties to a contract containing dependent promises where one party has committed a material breach and where the other, knowing of and complaining about the breach, nevertheless continues to operate under it?"

A more basic question which should be decided if certiorari should be granted is whether, on the undisputed facts, there was a breach by Respondent as a matter of law. Judge SMITH said (R. 26):

> "The questions here raised are primarily questions of law; there is some conflict in the testimony but there is no serious dispute as to the material facts."

Under paragraph 22 (R. 49) royalties were unequivocally stated to be due until the date of termination. Under paragraph 23 (R. 51) Petitioner could terminate only after arbitration of a matter in dispute. Petitioner never asked Respondent to sue a Canadian infringer, and did not give notice of any Canadian infringement until after the Canadian patent had expired; and Respondent did not know of any Canadian infringement until after the Canadian patent had expired (R. 69-70). There was therefore never any matter in dispute. Petitioner simply failed to pay royalties and set up the defenses herein as a pure afterthought.

Argument

The reasons relied on by Petitioner for granting of the writ are that

(1) The decision below is said to conflict with decisions in other circuits and other states;

(2) The First and Eighth Circuits are said to have interpreted New York law differently on the basis of the same case on which the Court below relied, and

(3) The decision below is said to establish a new rule of law.

Petitioner is in error on each point.

The Alleged Conflicts (Petitioner's Points 1 and 2)

Petitioner asserts on page 8 that the opinion below

> "cannot be otherwise construed than the law of that (the Third) Circuit".

The Court below expressly stated at R. 82 that its "single problem" was "What is the New York law * * *?" At R. 83-84 it answered that question based on the leading case in the New York Court of Appeals, the highest Court of that state.

The Court below found, however, that the alleged conflict does not exist, overruling the District Court on this point. It said (R. 83):

> "One would not expect to see the New York decisions depart from a rule which has been applied in such varying situations as to become what Professor Williston calls a 'principle.' "

Petitioner cites 5 cases and quotes from 4 in support of its alleged conflict. Those cases are not pertinent. They hold no more than the New York cases relied on by Petitioner and cited by the Court below at R. 82 which it said were

> "to the effect that one cannot recover damages for breach of contract where he, himself, has not rendered substantial compliance with its terms".

The Court said further (R. 82):

> "But the authorities just mentioned do not, we think, read upon the problem here. Our question is whether the party to a contract against whom a breach is committed can continue to enjoy its advantages without taking its burdens."

The extent to which Petitioner has strained to find a conflict is illustrated by its citation under both Points 1 and 2 (pp. 8 and 10) of the 8th Circuit case of *Western Battery & Supply Co.* v. *Hazlett Storage Battery Co.*, 61 F. 2d 220 (1932). In that case the Court held that the existence of a license was a defense to a suit for patent infringement. It said at page 238:

> "We are not passing on the question of recovery of royalties. Plaintiffs have an adequate remedy at law to test the question of the amount due as royalties. This action is based on alleged infringement, not on breach of contract. The decree in each of the cases is reversed, and they are remanded with instructions to dismiss the bills at the cost of appellees."

The Decision Below Does Not Establish a New Rule of Law (Petitioner's Point 3)

Petitioner's assertion that the decision below establishes a new rule of law is directly contradictory of the statement of the Court below at R. 83 that the law of New York follows general principles. As the Court said at R. 83:

> "One would not expect to see the New York decisions depart from a rule which has been applied in such varying situations as to become what Professor Williston calls a 'principle'."

Petitioner's speculations about loss of capital investment and compulsion to meet "price cutting competition of infringers" are meaningless as applied to this case. There was a total of 652 Randolph extinguishers sold into Canada (R. 67) having a value of some $9,000 (R. 68) on which royalties, if licensed, would have been $270.00.

Petitioner had available a complete remedy under paragraph 23 of the license (R. 51) by asking Respondent to sue, and arbitrating the requirement to sue if Petitioner refused.

CONCLUSION

It is accordingly prayed that the petition be denied.

FLOYD H. CREWS,
Attorney for Respondent.

DARBY & DARBY,
Counsel for Respondent.

New York, New York,
February 16, 1954.

[APPENDIX FOLLOWS]

APPENDIX

Part of Exhibit P-1—Supplementary Agreement dated August 28, 1942, Abrogating Price Fixing in the United States but not in Canada.

SPECIALTIES DEVELOPMENT CORPORATION
60 West Street
Bloomfield, New Jersey

PLEASE ADDRESS REPLY TO:
90 West Street
New York, N. Y.

August 28, 1942

Subject: License—Walter Kidde & Company, Inc., to C-O-Two Fire Equipment Company —Dated August 24th, 1932

C-O-Two Fire Equipment Company
U. S. Highway No. 1
Newark, New Jersey

Gentlemen:

Enclosed you will find a copy of a letter which we are sending to the Navy Department of the United States Government, granting their request for a license under our patent. In it, we are waiving royalties for the duration of the war but are asking that if the Government, through any of its agencies, decides upon compensation to be paid to the owners of patents for such use, consideration should be given to us and we should receive appropriate treatment in this respect.

Appendix—cont'd

We acknowledge receipt from you of a copy of a letter which you are sending to the Navy Department of the United States Government, granting them a royalty-free license under your patents.

With respect to our license to you, it is understood that the provisions contained therein for the maintenance of minimum prices and related provisions are hereby abrogated. With respect to royalties provided in our license to you, it is understood that royalties at the rate therein set forth will continue as to all non-Government sales made by your Company. As to sales made by you to the United States Government or any of its departments or agencies or to any contractor to the United States Government or its departments or agencies, no royalties shall be payable by you other than such as may be allowed by the Government in respect to the use by the Government of our patent as indicated in our enclosed letter to the Navy Department.

Kindly note your approval and consent to the foregoing modification of our license agreement by signing and returning to us a copy of this letter.

Very truly yours,

SPECIALTIES DEVELOPMENT CORPORATION
J. WILLIAM CARSON
J. William Carson, President

Approved and consented to
on August 28th, 1942.

C-O-TWO FIRE EQUIPMENT COMPANY
S. E. ALLEN
S. E. Allen, President.

enc. 1